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9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 **MORRIS EMANUEL,**
14 **Plaintiff,**

15 **v.**
16 **CITY OF SAN JOSE, a municipal**
17 **corporation; fnu CONSTANTIN,**
18 **individually and in his official capacity as**
19 **a police officer for the CITY OF SAN**
20 **JOSE, DOES 1-25, inclusive; individually**
21 **and in their capacities as POLICE**
22 **OFFICERS for the CITY OF SAN JOSE,**

23 **Defendants.**

24 **Case No.: C08-05321 RMW**

25 **STIPULATED PROTECTIVE ORDER**

26 **Honorable RONALD M WHYTE**

27 **1. PURPOSES AND LIMITATIONS**

28 Disclosure and discovery activity in this action are likely to involve production
of confidential, proprietary, or private information for which special protection from public
disclosure and from use for any purpose other than prosecuting this litigation would be
warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
following Stipulated Protective Order. The parties acknowledge that this Order does not

1 confer blanket protections on all disclosures or responses to discovery and that the
 2 protection it affords extends only to the limited information or items that are entitled under
 3 the applicable legal principles to treatment as confidential. The parties further
 4 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
 5 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets
 6 forth the procedures that must be followed and reflects the standards that will be applied
 7 when a party seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 a. Party: any party to this action, including all of its officers, directors,
 10 employees, consultants, retained experts, and outside counsel (and their support staff).

11 b. Disclosure or Discovery Material: all items or information, regardless
 12 of the medium or manner generated, stored, or maintained (including, among other things,
 13 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
 14 responses to discovery in this matter.

15 c. “Confidential” Information or Items: information (regardless of how
 16 generated stored or maintained) or tangible things that qualify for protection under
 17 standards developed under F.R.Civ.P.26(c).

18 d. “Highly Confidential — Attorneys’ Eyes Only” Information or Items:
 19 extremely sensitive “Confidential Information or Items” whose disclosure to another Party
 20 or non-party would create a substantial risk of serious injury that could not be avoided by
 21 less restrictive means.

22 e. Receiving Party: a Party that receives Disclosure or Discovery
 23 Material from a Producing Party.

24 f. Producing Party: a Party or non-party that produces Disclosure or
 25 Discovery Material in this action.

26 g. Designating Party: a Party or non-party that designates information or
 27 items that it produces in disclosures or in responses to discovery as “Confidential” or
 28 “Highly Confidential — Attorneys’ Eyes Only.”

h. Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential — Attorneys’ Eyes Only.”

- i. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

j. House Counsel: attorneys who are employees of a Party.

k. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

I. Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant retained in connection with this litigation.

m. Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

5. DESIGNATING PROTECTED MATERIAL

a. Exercise of Restraint and Care in Designating Material for Protection.

Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designated Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify — so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified, or that have been made for an improper purpose
10 (e.g., to unnecessarily encumber or retard the case development process, or to impose
11 unnecessary expenses and burdens on other parties), expose the Designating Party to
12 sanctions.

13 If it comes to a Party's or a non-party's attention that information or items
14 that it designated for protection do not qualify for protection at all, or do not qualify for the
15 level of protection initially asserted, that Party or non-party must promptly notify all other
16 parties that it is withdrawing the mistaken designation.

17 b. Manner and Timing of Designations. Except as otherwise provided in
18 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
19 stipulated or ordered, material that qualifies for protection under this Order must be clearly
20 so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 i. For information in documentary form (apart from transcripts of
23 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" at the top
25 of each page that contains protected material. If only a portion or portions of the material
26 on a page qualifies for protection, the Producing Party also must clearly identify the
27 protected portion(s) (e.g., by making appropriate markings in the margins) and must
28 specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or

1 "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY").

2 A Party or non-party that makes original documents or materials
3 available for inspection need not designate them for protection until after the inspecting
4 Party has indicated which material it would like copied and produced. During the
5 inspection and before the designation, all of the material made available for inspection
6 shall be deemed "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY." After the
7 inspecting Party has identified the documents it wants copied and produced, the
8 Producing Party must determine which documents, or portions thereof, qualify for
9 protection under this Order, then, before producing the specified documents, the
10 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
11 CONFIDENTIAL—ATTORNEYS' EYES ONLY") at the top of each page that contains
12 Protected Material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
14 making appropriate markings in the margins) and must specify, for each portion, the level
15 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL —
16 ATTORNEYS' EYES ONLY").

17 c. Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items as "Confidential" or "Highly Confidential
19 — Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right to
20 secure protection under this Order for such material. If material is appropriately
21 designated as "Confidential" or "Highly Confidential — Attorneys' Eyes Only" after the
22 material was initially produced, the Receiving Party, on timely notification of the
23 designation, must make reasonable efforts to assure that the material is treated in
24 accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 a. Timing of Challenges. Unless a prompt challenge to a Designating
27 Party's confidentiality designation is necessary to avoid foreseeable substantial
28 unfairness, unnecessary economic burdens, or a later significant disruption or delay of the

1 litigation, a Party does not waive its right to challenge a confidentiality designation by
 2 electing not to mount a challenge promptly after the original designation is disclosed.

3 b. Meet and Confer. A Party that elects to initiate a challenge to a
 4 Designating Party's confidentiality designation must do so in good faith and must begin the
 5 process by conferring directly (in voice to voice dialogue; other forms of communication
 6 are not sufficient) with counsel for the Designating Party. In conferring, the challenging
 7 Party must explain the basis for its belief that the confidentiality designation was not
 8 proper and must give the Designating Party an opportunity to review the designated
 9 material, to reconsider the circumstances, and if no change in designation is offered, to
 10 explain the basis for the chosen designation. A challenging Party may proceed to the next
 11 stage of the challenge process only if it has engaged in this meet and confer process first.

12 c. Judicial Intervention. A Party that elects to press a challenge to a
 13 confidentiality designation after considering the justification offered by the Designating
 14 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
 15 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail
 16 the basis for the challenge. Each such motion must be accompanied by a competent
 17 declaration that affirms that the movant has complied with the meet and confer
 18 requirements imposed in the preceding paragraph and that sets forth with specificity the
 19 justification for the confidentiality designation that was given by the Designating Party in
 20 the meet and confer dialogue.

21 The burden of persuasion in any such challenge proceeding shall be on the
 22 Designating Party. Until the court rules on the challenge, all parties shall continue to
 23 afford the material in question the level of protection to which it is entitled under the
 24 Producing Party's designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 a. Basic Principles. A Receiving Party may use Protected Material that
 27 is disclosed or produced by another Party or by a non-party in connection with this case
 28 only for prosecuting, defending, or attempting to settle this litigation. Such Protected

1 Material may be disclosed only to the categories of persons and under the conditions
2 described in this Order. When the litigation has been terminated, a Receiving Party must
3 comply with the provisions of section 11, below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 b. Disclosure of "CONFIDENTIAL" Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

10 i. the Receiving Party's Outside Counsel of record in this action,
11 as well as employees of said Counsel to whom it is reasonably necessary to disclose the
12 information for this litigation and who have signed the "Agreement to Be Bound by
13 Protective Order" that is attached hereto as Exhibit A;

14 ii. the officers, directors, and employees (including House
15 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
16 litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit
17 A);

18 iii. experts (as defined in this Order) of the Receiving Party to
19 whom disclosure is reasonably necessary for this litigation and who have signed the
20 "Agreement to Be Bound by Protective Order" (Exhibit A);

21 iv. the Court and its personnel;

22 v. court reporters, their staffs, and professional vendors to whom
23 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
24 to Be Bound by Protective Order" (Exhibit A);

25 vi. during their depositions, witnesses in the action to whom
26 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
27 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
28 depositions that reveal Protected Material must be separately bound by the court reporter

1 and may not be disclosed to anyone except as permitted under this Stipulated Protective
2 Order.

5 c. Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES
6 ONLY Information or Items. Unless otherwise ordered by the court or permitted in writing
7 by the Designating Party, a Receiving Party may disclose any information or item
8 designated "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to:

9 i. the Receiving Party's Outside Counsel of record in this action,
10 as well as employees of said Counsel to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the "Agreement to Be Bound by
12 Protective Order" that is attached hereto as Exhibit A:

17 || iii. The Court and its personnel:

21 v. the author of the document or the original source of the
22 information.

25 i. Unless otherwise ordered by the court or agreed in writing by
26 the Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this
27 Order) any information or item that has been designated "HIGHLY CONFIDENTIAL —
28 ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party

1 that (1) identifies the specific HIGHLY CONFIDENTIAL information that the Receiving
 2 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert
 3 and the city and state of his or her primary residence, (3) attaches a copy of the Expert's
 4 current resume, (4) identifies the Expert's current employer(s), (5) identifies each person
 5 or entity from whom the Expert has received compensation for work in his or her areas of
 6 expertise or to whom the expert has provided professional services at any time during the
 7 preceding five years, and (6) identifies (by name and number of the case, filing date, and
 8 location of court) any litigation in connection with which the Expert has provided any
 9 professional services during the preceding five years.

10 ii. A Party that makes a request and provides the information
 11 specified in the preceding paragraph may disclose the subject Protected Material to the
 12 identified Expert unless, within seven court days of delivering the request, the Party
 13 receives a written objection from the Designating Party. Any such objection must set forth
 14 in detail the grounds on which it is based.

15 iii. A Party that receives a timely written objection must meet and
 16 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve
 17 the matter by agreement. If no agreement is reached, the Party is seeking to make the
 18 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
 19 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to
 20 do so. Any such motion must describe the circumstances with specificity, set forth in
 21 detail the reasons for which the disclosure to the Expert is reasonably necessary, assess
 22 the risk of harm that the disclosure would entail and suggest any additional means that
 23 might be used to reduce that risk. In addition, any such motion must accompanied by a
 24 competent declaration in which the movant describes the parties' efforts to resolve the
 25 matter by agreement (i.e., the extent and the content of the meet and confer discussions)
 26 and sets forth the reasons advanced by the Designating Party for its refusal to approve the
 27 disclosure.

28 In any such proceeding the Party opposing disclosure to the Expert

1 shall bear the burden of proving that the risk of harm that the disclosure would entail
2 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the
3 Protected Material to its Expert.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
5 PRODUCED IN OTHER LITIGATION.

6 If a Receiving Party is served with a subpoena or an order issued in other
7 litigation that would compel disclosure of any information or items designated in this action
8 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY," the
9 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
10 immediately and in no event more than three court days after receiving the subpoena or
11 order. Such notification must include a copy of the subpoena or court order.

12 The Receiving Party also must immediately inform in writing the Party who
13 caused the subpoena or order to issue in the other litigation that some or all the material
14 covered by the subpoena or order is the subject of this Protective Order. In addition, the
15 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the
16 Party in the other action that caused the subpoena or order to issue.

17 The purpose of imposing these duties is to alert the interested parties to the
18 existence of this Protective Order and to afford the Designating Party in this case an
19 opportunity to try to protect its confidentiality interests in the court from which the
20 subpoena or order issued. The Designated Party shall bear the burdens and expenses of
21 seeking protection in that court of its confidential material – and nothing in these provisions
22 should be construed as authorizing or encouraging a Receiving Party in this action to
23 disobey a lawful directive from another court.

24 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized under
27 this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
28 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all

1 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
2 disclosures were made of all the terms of this Order, and (d) request such person or
3 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
4 hereto as Exhibit A.

5 **10. FILING PROTECTED MATERIAL**

6 Without written permission from the Designating Party or a court order
7 secured after appropriate notice to all interested persons, a Party may not file in the public
8 record in this action any Protected Material. A Party that seeks to file under seal any
9 Protected Material must comply with Civil Local Rule 79-5.

10 **11. FINAL DISPOSITION**

11 Unless otherwise ordered or agreed in writing by the Producing Party, within
12 sixty days after the final termination of this action, each Receiving Party must return all
13 Protected Material to the Producing Party. As used in this subdivision, "all Protected
14 Material" includes all copies, abstracts, compilations, summaries or any other form of
15 reproducing or capturing any of the Protected Material. With permission in writing from the
16 Designating Party, the Receiving Party may destroy some or all of the Protected Material
17 instead of returning it. Whether the Protected Material is returned or destroyed, the
18 Receiving Party must submit a written certification to the Producing Party (and, if not the
19 same person or entity, to the Designating Party) by the sixty day deadline that identifies
20 (by category, where appropriate) all the Protected Material that was returned or destroyed
21 and that affirms that the Receiving Party has not retained any copies, abstracts,
22 compilations, summaries or other forms of reproducing or capturing any of the Protected
23 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
24 all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
25 work product, even if such materials contain Protected Material. Any such archival copies
26 that contain or constitute Protected Material remain subject to this Protective Order as set
27 forth in Section 4 (DURATION), above.

28 **12. MISCELLANEOUS**

a. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

3 b. Right to Assert Other Objections. By stipulating to the entry of this
4 Protective Order no Party waives any right it otherwise would have to object to disclosing
5 or producing any information or item on any ground not addressed in this Stipulated
6 Protective Order. Similarly, no Party waives any right to object on any ground to use in
7 evidence of any of the material covered by this Protective Order.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: December 14, 2009, 2009

/s/

ADANTE POINTER
Attorney for Plaintiff

DATED: December 14, 2009

/s/
MICHAEL J. DODSON
Attorney for Defendants

PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS SO ORDERED.

DATED: December 18, 2009

1 EXHIBIT A

2 ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3

4 I, _____ [print or type full name], of

5 _____ [print or type full address], declare under penalty of perjury that I

6 have read in its entirety and understand the Stipulated Protective Order that was issued by

7 the United States District Court for the Northern District of California on [date] in the case

8 of Emanuel v. City of San Jose, et al. Case No.: C08-05321 RMW. I agree to comply with

9 and to be bound by all the terms of this Stipulated Protective Order and I understand and

10 acknowledge that failure to so comply could expose me to sanctions and punishment in

11 the nature of contempt. I solemnly promise that I will not disclose in any manner any

12 information or item that is subject to this Stipulated Protective Order to any person or

13 entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the

15 Northern District of California for the purpose of enforcing the terms of this Stipulated

16 Protective Order, even if such enforcement proceedings occur after termination of this

17 action.

18 I hereby appoint _____ [print or type full name] of

19 _____ [print or type full address and telephone

20 number] as my California agent for service of process in connection with this action or any

21 proceedings related to enforcement of this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____
[printed name]

25 Signature: _____